Post (p. 1, cols. 1-5) shows various candidates in the New Hampshire primary election campaigning, apparently with the owner's permission, inside factory premises. If one candidate is permitted such access, are other candidates, under the view suggested by the courts below, thereby required to be provided with "equal time?" And may the factory owner still bar other First Amendment activities as, for example, war protestors or religious handbillers or even union organizers? The fact that some communcation may have been previously permitted is thus clearly not a magical talisman which thereafter converts private property into public thoroughfares.

IV.

The result reached by the California Supreme Court in *Homart*, that a shopping center owner may protect his interests through "reasonable regulations," does not provide a workable solution. As both Homart and counsel for respondents will detail if permitted to orally argue this matter, there is patently no consensus as to the appropriate number, time, place, location, number of people or exhibits involved, manner of presentation and security factors that any such regulations would, *inter alia*, have to delineate. The provision for "reasonable regulations," accordingly, is merely a harbinger of litigation.[4] The proper resolution of this controversary, it is submitted, lies elsewhere: private property may be appropriated

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[4] For example, in *People* v. *Brayshaw*, No. A-332 (Riverside City, Cal. Sup. Ct.) (Nov. 30, 1971), a petition solicitor engaged in the same type of activity as in *Homart*, was convicted of criminal trespass for refusing to agree in advance to the "reasonable regulations" unilaterally imposed by a shopping center. The regulations required the solicitor, *inter alia*, to hold harmless the center, agree to remove any debris resulting from the solicitation and admit that the center had the right to withdraw the grant of solicitation privileges at any time it chose. The conviction was subsequently reversed on appeal on the expressed "narrow ground" that the latter portion of the rules "imposed an unreasonable regulation upon defendant."

for First Amendment activities only where it is shown in a particular instance that no reasonably effective alternative means of communication were available.

CONCLUSION

For the above-stated reasons, as well as those set forth by petitioner, the decision of the court below should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-492

LLOYD CORPORATION, LTD.,
Petitioner,

v.

DONALD M. TANNER, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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MOTION FOR LEAVE TO ENGAGE IN ORAL ARGUMENT

The American Retail Federation (hereinafter "Federation") hereby moves this Court pursuant to Rule 44(7) of the rules of this Court for leave to engage in oral argument of the instant case.[1] In support whereof, the following is respectfully shown.

The Federation is an organization composed of seventy-eight national and state retail associations. The membership of these associations consists of a wide variety

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[1] The Federation has filed a motion for leave to file a brief *amicus curiae* and brief *amicus curiae* herein.

of retail businesses ranging in size from small local stores to large national chains, representative of all aspects of the retail industry. Through these associations, the Federation represents approximately eight hundred thousand retailers with close to six million employees.

The question presented in the instant case—whether the owner of a private shopping center has a Constitutional obligation to make available such property for the use of those who desire to espouse any ideas thereon notwithstanding the availability of effective alternative locales to engage in such activities—is a matter of continuing importance to the Federation. Indeed, whatever resolution of this question is forthcoming from this Court, its impact upon the Federation's member associations, and the millions who are employed by the retailers which the Federation represents, will be dramatic.

By virtue of experience gained by the Federation through participating in numerous related cases before this Court,[1] and by its representation of hundreds of thousands of retail establishments of varying size and nature, the Federation is uniquely qualified to provide assistance to this Court, that is otherwise unavailable, in formulating a rule which will justly accommodate the manifold ramifications of the question presented.

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[1] The Federation, for example, has submitted briefs *amicus curiae* to this court in the related cases of *Amalgamated Food Employees Union, Local 590* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968); *Taggart* v. *Weinacker's*, 397 U.S. 223 (1970); *Central Hardware Company* v. *N.L.R.B.*, No. 70-223; and *Homart Development Company* v. *Diamond, et al.*, No. 1469.

WHEREFORE, for the foregoing reasons, the American Retail Federation respectfully moves this Court for leave to engage in oral argument of the instant case.

Respectfully submitted,

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